HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.23825 OF 2006

-

Between:

Rayudu Durga Kiran Kumar

.....Petitioners

AND

The Station House Officer,
IV Town Police Station,
Visakhapatnam and others.

.....Respondents

::ORDER::

Counsel for the petitioner : Sri M.V. Durga Prasad, Amicus.

Counsel for respondent Nos. 1, 2 and 5 o 8 : Government Pleader for Home

Counsel for respondent No. 3 : Sri S. Lakshminarahna

Counsel for respondent No. 4 : Sri S. Srinivas Reddy

October 12 2007

Per G.S. Singhvi, CJ

Letter dated 2.11.2006 sent by Rayudu Durga Kiran Kumar with the complaint that members of city task force police ransacked his house bearing No. 44-7-5/A, Thatichetlapalem, Visakhapatnam on 12.10.2006, abused and assaulted his family members at the instance of Ch. Sai Kumar, Reserve Inspector (Home Guards), Guntur and that despite representations made to the higher authorities, no action had been taken against the culprits, was treated as a taken up petition.

On 17.11.2006, notice was issued to respondent Nos. 1, 2 and 5 to 8 and the Commissioner of Police, Visakhapatnam was directed to submit report in the context of the allegations contained in the letter petition.

In response to the Court's direction, Sri V.S.K. Kaumudi, Commissioner of Police, Visakhapatnam, submitted report dated 19.11.2006. After considering the report, the Court passed the following order dated 30.11.2006, which reads as under:

> "We have gone through the report of Commissioner of Police, Visakhapatnam City. We appreciate the speed and earnestness with which the officer has conducted enquiry and submitted report to the Court, but are not satisfied with the action taken by him in a case which borders violation of basic rights of citizens. It needs no emphasis that an important role assigned to the manpower of the Police Department is to protect the lives and liberty of the citizens and not to harass and humiliate them. The manner in which the officials of the rank of Sub-Inspector of Police, Visakhapatnam including task force have conducted themselves should have prompted the senior officers to take action which would become an example for others and operate as a

deterrence.

We would have ourselves passed order against the officials who have been prima facie found guilty of serious violation of the rights of the complainant and other members of his family, but deem it proper to leave it to the discretion of the concerned authority and hope that they will take appropriate and adequate corrective measures by transferring those officials so that further investigation and enquiry may not be influenced, as is usually witnesses by the people of the entire nation. As a reminder, we may point out that in one of the cases involving killing of six people on the pavement of Delhi road, economically affluent accused manipulated the entire apparatus and got freedom. In another similar incident in Bombay, a well known public figure manipulated the entire apparatus and ensured that the prime witnesses of the crime turn hostile. Let the police of Andhra Pradesh not follow the suit.

As requested by the learned Government Pleader for Home, the case is adjourned to 15.12.2006.

A copy of this order may be sent to the petitioner so that if it becomes necessary she can bring further developments of the case to the notice of the Court."

On 15.12.2006, Sri S. Srinivas Reddy appearing on behalf of respondent No.4, Sri N. Vijayanand, sought time to file affidavit of his client. His requested was accepted and the case was adjourned to 28.12.2006. Simultaneously, Sri M.V. Durga Prasad, Advocate was requested to act as Amicus. On 3.1.2007, notices were ordered to be issued to the remaining respondents. On 5.3.2007, time was granted to Sri S. Lakshminarayana, Advocate appearing for respondent No.3 to enable his client to file reply affidavit. On the same day, respondent No. 3 filed affidavit along with documents marked as Exs. R3/1 to R3/3.

Sri M.V. Durga Prasad, learned Amicus emphasized the need for issue of a direction to the State Government and the Director General of Police to ensure that as and when the man in uniform is involved in violating the fundamental and legal rights of the citizens or inflicting

bodily harm to any one, immediate action is taken for his/her prosecution and simultaneously department action should be initiated to fix the accountability of the delinquent official. Learned Government Pleader highlighted the promptness with which the Commissioner of Police took action to register the criminal case against Sri S. Sai Kumar and to initiate disciplinary action against the wrong doers and submitted that as and when such incident is reported, necessary action will be taken against the delinquent. He also pointed out that the complaint made by Rayudu Durga Kiran Kumar has already been investigated by Assistant Commissioner of Police.

We have considered the respective submissions and gone through two reports submitted by Commissioner of Police, Visakhapatnam. In paragraphs 4 to 10 of his report dated 19.11.2006, the Commissioner of Police narrated the background in which the complaint was made and enumerated the details of the action taken against the wrong doers. These paragraphs read as under:

> "4) It is a fact that on 01.10.05, at 15:00 hrs., on the complaint of the petitioner's mother, a case in Cr.No.394/05, u/s 509 IPC was registered in IV Town Police Station, Visakhapatnam City, against Sri Ch. Sai Kumar, Reserve Inspector (Home Guards), for his highhanded behaviour towards the petitioner's mother. The case was chargesheeted on 11.11.2005 after completion of investigation and it is pending trial, vide C.C.No. 1511/2005. Ill feelings exist between the parties because of past differences as well as the existing case against Sri Sai Kumar lodged by Smt. Rayudu Ganga Ratnam, the mother of the petitioner.
>
> 5) On the information given by Sri Sai Kumar, regarding availability of ganja at the house of the petitioner on 12.10.2006, at about 12.45 hrs, Sri N. Vijaya Anand, SI, Task Force, informed the other SI, Sri Nageswara Rao, to proceed for search. Accordingly, S.I., Sri Nageswara Rao, went to the house of the petitioner to search for illegal possession of ganja, but no such contraband was found in the house of the petitioner. It is not true that the Task Force Police harassed and misbehaved with the relatives of the petitioner during the search.

However, proper search procedure was adopted by both the Sis of Task Force, Visakhapatnam City. In this connection, the explanation of Sri N. Vijaya Anand, SI Task Force, was called for and he admitted his lapse in directing the SI to conduct the search though he was not competent to do so. His explanation was not accepted and he was transferred from the Task Force and posted to the Police Control Room, Visakhapatnam City, on administrative grounds. The explanation of the other Task Force SI, Sri B. Nageswara Rao, who actually conducted the search was also obtained. Sri Ch. Nageswara Rao, SI, Task Force, who was directed by the first SI, has joined the City Police recently and was unaware of the background of Sri Sai Kumar, R.I. He has admitted the lapse on his part.

6) Detailed enquiry has been ordered for departmental action against both the SI's and the CI, IV Town P.S., as the Inspector did not take prompt action though he had conducted enquiry into the allegations in the petition which was received on 16.10.2006 at the Central Complaint Cell and endorcsed by the Commissioner of Police to him. Orders were issued by the A.C.P., East, Visakhapatnam City, vide memo No. 11/Genl/ACP-E/2006, dated 28.10.06, as given below:

"The SHO, IV Town Police Station, Visakhapatnam City, is hereby instructed to book a case against the respondent, Chandaka Sai Kumar, for his inhuman behaviour against the petitioner, Smt. Rayudu Ganga Ratnam, and her family members, and report compliance."

Had the Inspector, IV Town PS, acted as per the findings in his enquiry and orders of the ACP as above, the petitioner's grievance would have been addressed much earlier.

7) It is true that Smt. Rayudu Ganga Ratnam, mother of the petitioner, submitted a complaint at the Central Complaint Cell, on 16.10.2006, and the same was endorsed to the Inspector of Police, IV Town Police Station, vide C.C. Cell No. 1078/06, directing him to enquire into the matter and report. Inspector of Police, IV Town P.S., conducted enquiry and submitted his report through the ACP, who directed him to register a case against Sri Ch. Sai Kumar, and take action as mentioned above.

8) Sri B. Nageswara Rao, SI Task Force, submitted his report to the Hon'ble Ist Addl. Chief Metrpolitan Magistrate IV, VSP, on 17.11.2006, on the false information given by Sri Ch. Sai Kumar, leading to the search of the house of the petitioner. Inspector , IV Town P.S.,

was authorized by the Hon'ble Court of the 1st Additional Chief Metropolitan Magistrate, Visakhapatnam, on 18.11.06 to register a case against Sri Ch. Sai Kumar, for the offence under section 182 IPC and to submit the same for taking cognizance of the said offence. Sri Sai Kumar had moved the police machinery for giving false information for which he is liable u/s 182 IPC. Accordingly, the Inspector of Police, IV Town PS, registered a case in F.I.R.No. 758/2006 u/s 182 IPC against Sri Ch. Sai Kumar, and it is under investigation.

9) It is not true to say that no action was initiated upon the petitions of the petitioner. The Inspector of Police, IV Town Police Station, conducted enquiry on the orders of the Commissioner of Police and submitted his report upon which he was directed to book a case against the Sri Sai Kumar for harassing the petitioner. The police has already charged the earlier case against Sai Kumar who is the accused in Cr. No. 394/2005 u/s 509 IPC of IV Town P.S., and it is pending trial vide C.C.No. 1511/2005 on the file of the Hon'ble Court of the 1st Additional Chief Metropolitan Magistrate, Visakhapatnam. In the present issue also, the Inspector/SHO, IV Town P.S., on the directions the Hon'ble Court of the 1st Additional Chief Metropolitan Magistrate, Visakhapatnam, has registered FIR against Sri Ch. Sai Kumar, RI (Home Guards), Guntur, vide Cr.No. 758/2006 u/s 182 IPC at IV Town P.S.

10) On the administrative side, SI N. Vijaya Anand, who was in the known of the things since long and had asked the other S.I. B. Nageswara Rao, to conduct the search, has been transferred out of the Task Force. Both Sis, N. Vijaya Anand and B. Nageswara Rao of Task Force have submitted explanations regarding the irregular search procedure in the case. Both are being proceeded against departmentally in the matter. The Inspector of Police, IV Town PS, will also be dealt with for not carrying out instructions vide Memo No. 11/Genl/ACP-E/2006, dated 28.10.2006 of ACP, East, VSP City, to book a case against the respondent Chandaka Sai Kumar for his inhuman behaviour against the petitioner, Smt. Rayudu Ganga Ratnam and her family members, and thereby delaying action against Sri Ch. Sai Kumar, RI, Home Guards, Guntur, (under suspension). The case in Cr.No. 758/2006 U/s. 182 IPC of IV Town PS is also handed over to the ACP, East, Visakhapatnam City, for expediting the investigation. A copy of the FIR along with its enclosures is annexed herewith."

In paragraphs 2 to 4 of second report dated 13.12.2006, the Commissioner of Police has highlighted the progress made and the action initiated against the culprits. These two paragraphs also read as under:

> "2. Now I submit that Mr. N.H. Vijayanand, S.I. of Police, who was earlier relieved of his charge of the Task Force Police Station, has been surrendered to Visakhapatnam Range by transferring him out of Visakhapatnam City. The other SI of Police, B. Nageswararao of Task Force, was transferred to the Police Control Room from Task Force. Thus, both the Sis of Task Force have been transferred from their respective positions and new Sub Inspectors of Police were asked to take charge in their place.
>
> 3. I further submit that charge memos have been issued against the said two Sub Inspectors of Task Force Police Station and the SHO/Inspector of Police, IV Town Police Station, Visakhapatnam City, on 12.12.2006, basing on the enquiry report submitted by the Asst. Commissioner of Police, East Sub-division, Visakhapatnam City. Appropriate orders will be passed on receipt of their explanation, for which time has been fixed.
>
> 4. I further submit that a case in Cr.No. 758/06 U/s 182 IPC of IV Town Police Station, Visakhpatnam City, was registered against Ch. Sai Kumar, for furnishing false information regarding availability of Ganja at the house of Smt. Rayudu Ganga Ratnam. The case was entrusted to the Assistant Commissioner of Police, East Sub-division, Visakhapatnam for investigation and further action. The Assistant Commissioner of Police, East Sub-division, Visakhapatnam City, took up investigation, completed the same and filed charge sheet on 08.12.2006. A copy of the charge sheet is enclosed herewith."

In the counter affidavit filed by him, respondent No.4, Sri N.H. Vijayanand, has highlighted the alleged rivalry between the representationist and Sri Ch. Sai Kumar in the following words:

> "(a) Prior to the incident which occurred on 12.10.2006 I received a call from the Camp Clerk of the Commissioner of Police, Visakhapatnam, the 5th respondent herein

stating that Sri C. Sai Kumar, the 3rd respondent herein has met the 5th respondent and informed him that Ganja is being stored at a particular place in Tatichetlapalem area and instructed me to contact the3rd respondent and take appropriate action. Accordingly, I contacted the 3rd respondent who informed me that Ganja is being sometimes stored in the petitioner's house at Tatichetlapalem. The 3rd respondent thereafter called me on three different occasions in the early hours and informed me that Ganja is being transported from the petitioner's house to the RTC Complex and requested me to rush to RTC Complex. Though, on all three occasions rushed to the R.T.C. Complex, I could not apprehend anybody. In fact, the 3rd respondent used to be present at the R.T.C. Complex and on all the three occasions informed me that the culprits have escaped since I have not reached the said place in time.

b) While matters stood thus, on 12.10.2006 at about 12:45 pm I again received a phone call from the 3rd respondent informing me that Ganja is stored in the petitioner's house and that it is about to be shifted within a few minutes. As I was far away from the said spot, I informed Sri B. Nageswar Rao, the other S.I. of the Task Force, who is junior to me, who was on patrolling duty and was quite near the spot, to verify and proceed further. The same was also admitted by the S.I. B. Nageswar Rao in his report submitted to the Chief Metropolitan Magistrate, Visakhapatnam wherein a request was made to register a case against the 3rd respondent. As I am senior to the said Sri B. Nageswar Rao, I am empowered to issue such directions as per Order 101 (2) of the A.P. Police Manual, Part-I. Copy of the relevant portion of the said order is filed in the material papers and the same may be read as a part of this affidavit. Accordingly, Sri B. Nageswar Rao conducted a search. Therefore, I was not present at the spot at the time of search. Therefore, the allegation of the petitioner that I shook hands after completion of the search with the 3rd respondent is not true and correct. I was not aware of the rivalry between the petitioner and the 3rd respondent and I acted in the matter purely in the discharge of my lawful duties without any consideration whatsoever. Though a criminal case was instituted against the 3rd respondent at the instance of the petitioner in the year 2005, none of the police personnel who were concerned with the incident which occurred on 12.10.2006

were aware of the rivalry between the petitioner and the 3rd respondent. The said rivalry came to light only after enquiries were conducted pursuant to the complaint of the petitioner made after the incident."

In his affidavit, respondent No.4, Sri Ch. Sai Kumar, has denied the allegation of having assaulted and abused the family members of the representationist and averred that the complaint dated 2.11.2006 is an end product of the animosity with him.

We have considered the entire matter. Though the suggestion made by the Learned Amicus appears laudable, we do not consider it necessary to pass any substantive order in the matter because that is bound to prejudice the action already initiated by the higher authorities in the police department against respondent No.3. Any observation by the Court is likely to cause prejudice to the pending punitive and departmental actions.

Hence, the matter is closed with the observation that the representationist, Rayudu Kiran Kumar, shall be free to avail appropriate legal remedy against respondent No.3.

However, it is made clear that closure of this case shall not be construed as a licence by the departmental authorities for not vigorously pursuing the case instituted against respondent No. 3 or taking appropriate decision in the departmental enquiry.

G.S.SINGHVI, C.J.

C.V.NAGARJUNA REDDY, J.

October 12 2007

ks/ARS